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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ASHTON W. THOMAS,

9 Plaintiff,

v.

10 WASHINGTON STATE
11 DEPARTMENT OF CORRECTIONS,
et al.

12 Defendants.
13

CASE NO. C20-6232 BHS

ORDER DECLINING TO ADOPT
REPORT & RECOMMENDATION
AND GRANTING PLAINTIFF'S
MOTION TO VOLUNTARILY
DISMISS COMPLAINT

14 This matter comes before the Court on the Report and Recommendation ("R&R")
15 of the Honorable David W. Christel, United States Magistrate Judge, Dkt. 8, and Plaintiff
16 Ashton Thomas's motion to voluntarily dismiss complaint, Dkt. 9.

17 Thomas, proceeding pro se, commenced this action alleging violations of his
18 constitutional rights. *See* Dkts. 1-1, 5. On January 26, 2021, Judge Christel screened
19 Thomas's proposed amended complaint and found it deficient because Thomas failed to
20 state a claim for which relief may be granted. Dkt. 6. Judge Christel dismissed the
21 proposed amended complaint without prejudice and provided Thomas leave to file an
22 amended pleading by March 17, 2021. *Id.* Thomas failed to comply with the Court's

1 Order, and Judge Christel issued the instant R&R recommending that this case be
2 dismissed without prejudice. Dkt. 8.

3 On April 26, 2021, Thomas filed a motion to voluntarily dismiss his complaint
4 pursuant to Federal Rule of Civil Procedure 41(a). Dkt. 9 He indicates that he was
5 hospitalized and unable to meet the Court's deadline in amending the deficiencies. *Id.*
6 Rule 41(a) allows a plaintiff to voluntarily dismiss an action by filing "a notice of
7 dismissal before the opposing party serves either an answer or a motion for summary
8 judgment." Fed. R. Civ. P. 41(a)(1)(A)(i). None of the Defendants in this case has been
9 served, and voluntary dismissal is permissible.

10 Therefore, the Court declines to adopt the R&R, Dkt. 8, due to a change in
11 circumstances. Thomas's motion to voluntarily dismiss his complaint, Dkt. 9, is
12 **GRANTED**, and his claims are **DISMISSED without prejudice**.

13 **IT IS SO ORDERED.**

14 Dated this 1st day of June, 2021.

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BENJAMIN H. SETTLE
United States District Judge